UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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| ALLIANZ GLOBAL RISKS U.S. INSURANCE COMPANY, as subrogee of Buffets Holdings, Inc., Plaintiff | ) | |
| vs. | ) | No. 07 C 7149 |
| NOVAK CONSTRUCTION COMPANY, an Illinois corporation, Defendant/Third Party Plaintiff | ) | Judge Samuel Der-Yeghiayan |
| vs, | ) | |
| RESTAURANT SPECIALTIES, INC., KIEFFER & CO., INC AERO ELECTRIC & COMMUNICATIONS, MIDWEST SIGN & LIGHTING, INC. and THE CROWLEY GROUP, LLC, f/k/a LAWLER & CROWLEY CONSTRUCTORS, LLC, Third Party Defendants | ) | |

**FIRST AMENDED THIRD PARTY COMPLAINT**

NOW COMES the defendant, NOVAK CONSTRUCTION COMPANY, by and through one of its attorneys, Timothy R. Couture of Johnson & Bell, Ltd., and without prejudice to the denials made in its answer to Plaintiff's Complaint, and pleading in the alternative, set forth its First Amended Third Party Complaint against RESTAURANT SPECIALTIES, INC., KIEFFER & CO., INC., AERO ELECTRIC AND COMMUNICATIONS and MIDWEST SIGN & LIGHTING, INC. as follows:

**JURISDICTION AND VENUE**

1. Plaintiff, ALLIANZ GLOBAL RISK U.S. INSURANCE COMPANY is a California corporation with its principal place of business in Burbank, California.

2. Plaintiff's subrogor, BUFFET HOLDINGS, INC. (hereinafter "BUFFET"), is a Delaware corporation with its principal place of business being in the State of Minnesota.

3. Defendant/Third Party Plaintiff, NOVAK CONSTRUCTION COMPANY (hereinafter "NOVAK") is an Illinois corporation with its principal place of business in Chicago, Illinois.

4. Pursuant to 28 U.S,C., §1441 *et. seq.*, and based upon the diversity of citizenship of the Plaintiff and defendant, this action was properly filed in federal court.

5. Venue is proper in this judicial district in that the accident alleged occurred on Cook County, Illinois, which is within the confines of the Eastern Division of the Northern District of Illinois. *See* 28 U.S.C. §1391(a) and 28 U.S.C. § 93(a).

**ALLEGATIONS COMMON TO ALL COUNTS**

6. On December 20, 2007, Plaintiff filed its Complaint alleging that it suffered damages as a result of May 12, 2006 fire occurring at an Old County Buffet Restaurant located in the Town & Country Shopping Mall at 445 East Palatine Road, Arlington Heights, Illinois (hereinafter "the restaurant"). A copy of Said Complaint is attached as Exhibit 1.

7. In Plaintiff's Complaint at Law, Plaintiff alleges that the fire started as a result of the removal of an exterior sign and the failure to remove, disconnect or lock out the electrical circuit for said sign (herinafter "the electrical circuit").

8. Defendant, NOVAK filed an answer to Plaintiff's Complaint denying all of the material allegations of said Complaint, and denying all of the negligent conduct attributed to it.

9. At all times relevant, RESTAURANT SPECIALTIES, INC. (hereinafter "RSI") was an Ohio corporation with its principal place of business in Columbus, Ohio.

10. At all times relevant, KIEFFER & CO., INC. (hereinafter "KIEFFER") was a Wisconsin corporation with its principal place of business in Sheboygan, Wisconsin.

11. At all times relevant, AERO ELECTRIC AND COMMUNICATIONS. (hereinafter "AERO") was an Illinois corporation with its principal place of business in Loves Park, Illinois.

12. At all times relevant, MIDWEST SIGN & LIGHTING, INC. (hereinafter "MIDWEST") was an Illinois corporation with its principal place of business in Country Club Hills, Illinois.

13. Upon information and belief, prior to May 12, 2006 RSI contracted with BUFFET to act as general contractor for certain construction work occurring at the restaurant.

14. Upon information and belief, prior to May 12, 2006 AERO entered into a subcontract with RSI to perform certain electrical work at the restaurant.

15. Upon information and belief, prior to May 12, 2006, KIEFFER entered into a contract with the building owner's representative, Lawler & Crowley Constructor, LLC to perform certain work related to exterior signage at said shopping mall.

16. Upon information and belief, prior to May 12, 2006, MIDWEST entered into a contract with KIEFFER to perform certain work related to exterior signage at the Town & Country Shopping Mall.

**COUNT I: KIEFFER & CO., INC.**

1-16. Third Party Plaintiff NOVAK restates and realleges paragraphs 1-16 as set forth above as paragraphs 1-16 of this Count I.

17. Prior to May 12, 2006, KIEFFER, and/or one of its subcontractors, removed the exterior sign that is the subject of Plaintiff's Complaint at Law.

18. On and prior to May 12, 2006, KIEFFER owed a duty to exercise reasonable care and caution in the performance of its work and to supervise and inspect all of the work performed by its subcontractors and employees.

19. In spite of said duties, and in violation thereof, Third Party Defendant, KIEFFER was there and then guilty of the following negligent acts and/or omissions:

a. Improperly removed the subject sign;

b. Failed to properly lockout, disconnect, remove or de-energize the sign's wiring and electrical circuit;

c. Failed properly mark the electrical panel, box or disconnect which previously fed power to the sign;

d. Failed to inspect the sign's wiring and electrical circuit following the removal of the sign to ensure that it was properly locked out, removed or de-energized;

e. Failed to warn BUFFET, the building's owner, or Lawler & Cowley Constructors, that the sign was improperly removed with the circuit in place and connected to electrical power so that BUFFET, the owner or Lawler & Crowley Constructors could act accordingly to prevent damage to property;

f. Failed to observe applicable safety standards in the removal of the sign and disconnection of power thereto;

g. Failed to properly train its employees in the proper removal of the sign and disconnection of electrical power thereto;

h. Failed to take all reasonable and necessary precautions to prevent a fire;

i. Failed to supervise its employees and subcontractors with respect to the removal of the sign;

j. Failed to supervise its employees and subcontractors with respect to the proper removal, lock out, or labeling of the electrical circuits feeding the sign;

k. Any and all other acts and/or omissions constituting negligence which may become known through the course of discovery.

20. As a direct and proximate result of one or more of the aforesaid careless and negligent acts and/or omissions of the Third Party Defendant, KIEFFER, Plaintiff allegedly sustained injuries and damages.

21. While defendant, NOVAK, denies any liability to Plaintiff, and further denies that Plaintiff was damaged to the extent alleged, if Plaintiff proves that it is entitled to any recovery whatsoever from NOVAK, then NOVAK asserts that its liability is far less in degree than that of Third Party Defendant, KIEFFER.

22. In the event that Plaintiff recovers against NOVAK in any amount whatsoever, NOVAK is entitled to contribution from KIEFFER in an amount equal to KIEFFER's percentage of fault in proximately causing or contributing to the cause of Plaintiff's damages in accordance with the Illinois Joint Tort Feasors Contribution Act.

WHEREFORE, defendant/third party Plaintiff, NOVAK CONSTRUCTION COMPANY, prays that judgment be entered in its favor and against Third Party Defendant KIEFFER & CO., INC. in an amount equal to the sum which represents the relative degree of fault of KIEFFER & CO., INC. in proximately causing Plaintiff's injuries and damages plus costs of suit.

**COUNT II: RESTAURANT SPECIALTIES, INC.**

1-16. Third Party Plaintiff NOVAK restates and realleges paragraphs 1-16 as set forth above as paragraphs 1 – 16 of this Count II.

17. Prior to May 12, 2006, RSI and/or one of its subcontractors in the course of performing its work in the restaurant, performed work on the electrical wires, cable, panel, box and/or disconnect that previously powered the sign that is the subject of Plaintiff's Complaint.

18. On and prior to May 12, 2006, Third Party Defendant, RSI owed a duty to exercise reasonable care and caution in the performance of its construction work and to supervise and inspect all of the work performed by its subcontractors and employees at the restaurant.

19. In spite of said duties, and in violation thereof, Third Party Defendant, RSI was there and then guilty of the following negligent acts and/or omissions:

a. Failed to properly lockout, disconnect, remove or de-energize the sign's wiring and electrical circuit;

b. Failed to inspect the sign's wiring and electrical circuit following the removal of the sign to ensure that it was properly locked out, removed or de-energized;

c. Failed properly label or mark the electrical panel, box or disconnect which previously fed power to the sign;

d. Failed to warn BUFFET, the building's owner, or Lawler & Cowley Constructors, that the sign was improperly removed with the circuit in place and connected to electrical power so that BUFFET, the owner or Lawler & Crowley Constructors could act accordingly to prevent damage to property;

e Failed to take all reasonable and necessary precautions to prevent a fire;

f. Violated federal, state and local codes, statutes and such ordinances;

g. Failed to supervise its employees and subcontractors in the performance of their work;

h. Activated or energized the electrical circuit that had previously fed the sign so as to cause a fire;

i. Any and all other acts and/or omissions constituting negligence which may become known through the course of discovery.

20. As a direct and proximate result of one or more of the aforesaid careless and negligent acts and/or omissions of the Third Party Defendant, RSI, Plaintiff allegedly sustained injuries and damages.

21. While defendant, NOVAK, denies any liability to Plaintiff and further denies that Plaintiff was damaged to the extent alleged, if Plaintiff proves that it is entitled to any recovery whatsoever from NOVAK, then NOVAK asserts that its liability is far less in degree than that of Third Party Defendant, RSI.

22. In the event that Plaintiff recovers against NOVAK in any amount whatsoever, NOVAK is entitled to contribution from RSI in an amount equal to RSI's percentage of fault in proximately causing or contributing to the cause of Plaintiff's damages in accordance with the Illinois Joint Tort Feasors Contribution Act.

WHEREFORE, defendant/third party Plaintiff, NOVAK CONSTRUCTION COMPANY, prays that judgment be entered in its favor and against Third Party Defendant RESTAURANT SPECIALTIES, INC. in an amount equal to the sum which represents the relative degree of fault of RESTAURANT SPECIALTIES, INC. in proximately causing Plaintiff's injuries and damages plus costs of suit.

**COUNT III: AERO ELECTRIC AND COMMUNICATIONS**

1 - 16. Third Party Plaintiff NOVAK restates and realleges paragraphs 1-16 as set forth above as paragraphs 1-16 of this Count III.

17. Prior to May 12, 2006, in the course of its electrical work, AERO performed work on the electrical wires, cable, panel, box and/or disconnect that previously powered the sign that is the subject of Plaintiff's Complaint.

18. On and prior to May 12, 2006 AERO owed a duty exercise reasonable care and caution in the performance of its work and to supervise and inspect all of the work performed by its employees at the restaurant.

19. In spite of said duties, and in violation thereof, Third Party Defendant, AERO was there and then guilty of the following negligent acts and/or omissions:

a. Failed to properly lockout, disconnect, remove or de-energize the sign's wiring and electrical circuit;

b. Failed to inspect the sign's wiring and electrical circuit following the removal of the sign to ensure that it was properly locked out, removed or de-energized;

c. Failed properly label or mark the electrical panel, box or disconnect which previously fed power to the sign;

d. Failed to warn BUFFET, the building's owner, or Lawler & Cowley Constructors, that the sign was improperly removed with the circuit in place and connected to electrical power so that BUFFET, the owner or Lawler & Crowley Constructors could act accordingly to prevent damage to property;

e Failed to take all reasonable and necessary precautions to prevent a fire;

f. Violated federal, state and local codes, statutes and such ordinances;

g. Failed to supervise its employees in the performance of their work;

h. Activated or energized the electrical circuit that had previously fed the sign so as to cause a fire;

i. Any and all other acts and/or omissions constituting negligence which may become known through the course of discovery.

20. As a direct and proximate result of one or more of the aforesaid careless and negligent acts and/or omissions of the Third Party Defendant, AERO, Plaintiff allegedly sustained injuries and damages.

21. While defendant, NOVAK, denies any liability to the Plaintiff and further denies that Plaintiff was damaged to the extent alleged, if Plaintiff proves that it is entitled to any recovery whatsoever from NOVAK, then NOVAK asserts that its liability is far less in degree than that of Third Party Defendant, AERO.

22. In the event that Plaintiff recovers against NOVAK in any amount whatsoever, NOVAK is entitled to contribution from RSI in an amount equal to AERO's percentage of fault in proximately causing or contributing to the cause of Plaintiff's damages in accordance with the Illinois Joint Tort Feasors Contribution Act.

WHEREFORE, defendant/third party Plaintiff, NOVAK CONSTRUCTION COMPANY, prays that judgment be entered in its favor and against Third Party Defendant AERO ELECTRIC AND COMMUNICATIONS. in an amount equal to the sum which represents the relative degree of fault of AERO ELECTRIC SERVICES INC. in proximately causing Plaintiff's injuries and damages plus costs of suit.

**COUNT IV: MIDWEST SIGN & LIGHTING, INC.**

1-16. Third Party Plaintiff NOVAK restates and realleges paragraphs 1-16 as set forth above as paragraphs 1-16 of this Count IV.

17. Prior to May 12, 2006 MIDWEST removed the exterior sign that is the subject of plaintiff's Complaint at Law.

18. On and prior to May 12, 2006, MIDWEST owed a duty to exercise reasonable care and caution in the performance of its work and to supervise and inspect all of the work performed its and employees at the restaurant.

19. In spite of said duties, and in violation thereof, Third Party Defendant MIDWEST was there and then guilty of one or more of the following acts and/or omissions:

a. Improperly removed the subject sign;

b. Failed to properly lockout, disconnect, remove or de-energize the sign's wiring and electrical circuit;

c. Failed properly mark the electrical panel, box or disconnect which previously fed power to the sign;

d. Failed to inspect the sign's wiring and electrical circuit following the removal of the sign to ensure that it was properly locked out, removed or de-energized;

e. Failed to warn BUFFET, the building's owner, or Lawler & Cowley Constructors, that the sign was improperly removed with the circuit in place and connected to electrical power so that BUFFET, the owner or Lawler & Crowley Constructors could act accordingly to prevent damage to property;

f. Failed to observe applicable safety standards in the removal of the sign and disconnection of power thereto;

g. Failed to properly train its employees in the proper removal of the sign and disconnection of electrical power thereto;

h. Failed to take all reasonable and necessary precautions to prevent a fire;

i. Failed to supervise its employees with respect to the removal of the sign;

j. Failed to supervise its employees with respect to the proper removal, lock out, or labeling of the electrical circuits feeding the sign;

k. Any and all other acts and/or omissions constituting negligence which may become known through the course of discovery.

20. As a direct and proximate result of one or more of the aforesaid careless and negligent acts and/or omissions of the Third Party Defendant MIDWEST, plaintiff allegedly sustained injuries and damages.

21. While defendant NOVAK denies any liability to plaintiff and further denies that plaintiff was damaged to the extent alleged. If plaintiff proves that it is entitled to any recovery whatsoever from NOVAK, then NOVAK asserts that its liability is far less in degree than that o Third Party Defendant MIDWEST.

22. In the event that plaintiff recovers against NOVAK in any amount whatsoever, NOVAK is entitled to contribution from MIDWEST in an amount equal to MIDWEST's

percentage of fault proximate causing or contributing to the cause of plaintiff's damages in accordance with the Illinois Joint Tort Feasors Contribution Act.

WHEREFORE, defendant/third party Plaintiff, NOVAK CONSTRUCTION COMPANY, prays that judgment be entered in its favor and against Third Party Defendant, MIDWEST SIGN & LIGHTING, INC. in an amount equal to the sum which represents the relative degree of fault of MIDWEST SIGN & LIGHTING, INC., in proximately causing Plaintiff's injuries and damages plus costs of suit.

**Defendant/Counterplaintiff demands Trial by Jury**

Respectfully submitted,
__s/Timothy R. Couture______________
One of the attorneys for defendant
NOVAK CONSTRUCTION COMPANY

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